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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

ADECCO, INC, and DOES 1 through 100, inclusive,

Defendants.

No. CV-07-5604 MMC

**DECLARATION OF DANIEL H.
QUALLS IN SUPPORT OF MOTION
TO FURTHER MODIFY PRETRIAL
PREPARATION ORDER**

DATE: September 26, 2008

TIME: 9:00 a.m.

CTRM: 7

JUDGE: HON. MAXINE M. CHESNEY

1 Daniel H. Qualls, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all the courts of the State of
3 California, and am a Partner with the law firm of Qualls & Workman, L.L.P., attorneys of record
4 herein for Plaintiff Shavotnae Goldsby. The following is based on my personal knowledge, and if
5 called upon to do so, I could and would competently testify thereto.

6 2. Attached hereto as Exhibit A, is a true and correct copy of Plaintiff's June 27,
7 2008, motion for relief from the existing Pretrial Preparation Order issued by this Court, seeking
8 to move the deadline to file a motion for class certification from July 7, 2008, to September 22,
9 2008.

10 3. This Court entered an Order on July 28, 2008. The Order granted Plaintiff's
11 motion in part by extending the deadline to file a class certification motion until August 31, 2008.
12 The Order provided that Plaintiff could seek a further extension without prejudice, if needed,
13 pending the outcome of her discovery motion. A true and correct copy of said Order is attached
14 hereto as Exhibit B.

15 4. Plaintiff filed a Motion to Compel Further Responses to Plaintiff's First Set of
16 Special Interrogatories in this Court on July 3, 2008. Attached hereto as Exhibit C is a true and
17 correct copy of said motion.

18 5. The Court referred Plaintiff's Motion To Compel and all subsequent discovery
19 disputes to a Magistrate Judge on July 7, 2008. Attached hereto as Exhibit D is a true and correct
20 copy of the Order Referring To Magistrate Judge Plaintiff's Motion To Compel.

21 6. Magistrate Judge Spero denied Plaintiff's Motion To Compel for failure to
22 adequately meet-and-confer per Judge Spero's standing order on July 15, 2008. A true and correct
23 copy of Judge Spero's July 15, 2008 Order is attached hereto as Exhibit E.

24 7. On July 30, 2008, the parties submitted a joint, five-page letter brief to Judge Spero
25 summarizing the parties' relative positions on the issue. a true and correct copy of the letter brief is
26 attached hereto as Exhibit F.

27 8. Judge Spero held a telephonic hearing with the parties on August 1, 2008.
28 Following the hearing, Judge Spero ordered Defendant to produce the contact information per

1 Plaintiff's counsel's proposal, with severe limitations. Judge Spero issued an Order to this effect
2 on August 5, 2008, a true and correct copy is attached hereto as Exhibit G.

3 9. Plaintiff timely objected to Judge Spero's August 5, 2008 Order on August 15,
4 2008. Attached hereto as Exhibit H is a true and correct copy of Plaintiff's Objections To
5 Magistrate Judge Spero's August 5, 2008, Order Granting In Part And Denying In Part Plaintiff's
6 Motion To Compel.

7 10. On August 14, 2008, Defendant's counsel contacted Plaintiff's counsel to inform
8 Plaintiff's counsel that transmittal of Defendant's outstanding interrogatory responses would be
9 delayed. As of the date of this motion, Defendant has not produced the information.

10 11. In compliance with Civil L.R. 16-2(d)(2), the parties met and conferred via
11 telephone regarding the proposed modification to the Pretrial Preparation Order on August 11,
12 2008. Defense counsel was willing to stipulate only to a 14-day extension of Plaintiff's deadline
13 to file a motion for class certification.

14 I declare under penalty of perjury that the foregoing is true and correct and that this
15 Declaration was executed August 22, 2008, in San Francisco, California.

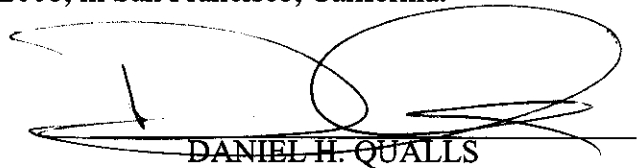
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EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, AND ALL OTHERS
SIMILARLY SITUATED,

Plaintiff,

vs.

ADECCO, INC, and DOES 1 through 100, inclusive,

Defendants.

No. CV-07-5604 MMC

**PLAINTIFF SHAVOTNE GOLDSBY'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO MODIFY PRETRIAL
PREPARATION ORDER**

DATE: AUGUST 1, 2008

TIME: 10:30 A.M.

CTRM: 7

JUDGE: HON. MAXINE M. CHESNEY

I. STATEMENT OF FACTS

Plaintiff Shavotnae Goldsby (Goldsby) is a former hourly employee of Defendant Adecco, Inc. (ADECCO). While employed by ADECCO, Goldsby contends she periodically failed to receive meal period breaks as required by California law. Plaintiffs contend ADECCO maintains employee records depicting when meal period breaks were not taken by hourly employees. Plaintiff contends ADECCO did not pay Goldsby an additional hour of compensation for missed meal period breaks. Goldsby's employment with ADECCO terminated on December 26, 2006. Goldsby filed a Class Action Complaint for violations on July 26, 2007.¹ The Complaint was served on ADECCO on August 17, 2007.² In her Complaint, Goldsby sought to represent a proposed class of current and former ADECCO California hourly workers employed by ADECCO between July 26, 2003, and the present as follows:

persons paid on an hourly basis for whom ADECCO records depict a meal period not taken who did not receive a compensation payment by ADECCO for lack of said meal period.

On August 27, 2007, Plaintiff served her first set of special interrogatories and demand for production of documents on ADECCO.³ Special Interrogatory No. 1 asked ADECCO to identify the names, addresses, e-mail addresses, and telephone numbers of employed by ADECCO between July 26, 2003, and the present paid on an hourly basis and for whom ADECCO's records depicted a meal period not taken. Special Interrogatory No. 2 asked ADECCO to identify the period of employment for each person identified in response to Special Interrogatory No. 1. No. 3 asked ADECCO to identify the number of persons employed by ADECCO in California between July 26, 2003 and the present paid on an hourly basis for whom ADECCO records depicted a meal period not taken. No. 4 asked ADECCO to identify the number of persons employed by ADECCO in California paid on an hourly basis between July 26, 2003 and the present who

¹ Declaration of Daniel H. Qualls In Support Of Plaintiff Shavotnae Goldsby's Motion To Modify Pretrial Preparation Order ("Qualls Decl.") ¶ 2, EX A.

² Id.

³ Qualls Decl., ¶ 3, EX. B.

1 complained to ADECCO regarding the absence of meal period breaks. No. 5 asked ADECCO to
 2 identify the number of persons employed by ADECCO in California between July 26, 2003 and
 3 the present who were paid on an hourly basis.⁴

4 ADECCO did not provide any of the requested information in its response, which it served
 5 on Plaintiff on November 1, 2007.⁵ Instead, it filed objections on numerous grounds, including
 6 claims that the requested information violated the rights of privacy of the affected persons and that
 7 the requests were burdensome. The Special Interrogatories remain unanswered.

8 On September 7, 2007, Plaintiff served notices seeking to take the depositions of
 9 ADECCO's Persons Most Knowledgeable regarding 1) ADECCO policy and procedures
 10 regarding issuance of final payroll checks to terminated California employees; 2) ADECCO
 11 California meal period break policies; and 3) ADECCO meal period break record keeping
 12 practices and procedures.⁶ The depositions were noticed to proceed on September 25, 2007.⁷
 13 ADECCO then requested that the depositions be extended for 15 days, and Plaintiff agreed to do
 14 so.⁸ ADECCO stalled further and did not produce its Persons Most Knowledgeable on the
 15 noticed topics.

16 On November 2, 2007, ADECCO removed this case to federal court.⁹ Consequently,
 17 Plaintiff's ability to commence discovery was placed on hold until the parties held a Rule 26
 18 Initial Disclosure Conference on February 1, 2008.¹⁰

19 Following the Rule 26 Conference, on February 5, 2008, Plaintiff served Rule 30(b)(6)
 20 deposition notices seeking the same knowledge from ADECCO as previously noticed on
 21 September 7, 2007.¹¹ These depositions were initially noticed for March 5, 2008, and then were
 22 again rescheduled to May 22, 2008 per ADECCO's request. As the May 22 date approached,
 23 ADECCO sought to reschedule the depositions for the fifth time.¹² On June 4, 2008, Plaintiff's

24
 25 ⁴ Id.

⁵ Qualls Decl. ¶ 4, EX. C.

⁶ Qualls Decl., ¶ 5, EX. D.

⁷ Id.

⁸ Id.

⁹ Qualls Decl., ¶ 6, EX. E.

¹⁰ Qualls Decl., ¶ 6.

¹¹ Qualls Decl., ¶ 7, EX. F.

¹² Id.

1 counsel took the deposition of ADECCO's representative, Kim Hans, Vice President of
 2 Operations, Southwest Division on the noticed topics. At this deposition, Plaintiff learned the
 3 nature of Defendant's recordkeeping practices for the first time: the various methods by which
 4 ADECCO hourly employees record their meal periods and the existence of ADECCO's records
 5 thereof.¹³

6 On February 15, 2008, this Court entered its Pretrial Preparation Order (Order) pursuant to
 7 Rule 16 of the Federal Rules of Civil Procedure.¹⁴ The Order specified that the deadline for
 8 Plaintiff to file her motion for class certification was July 7, 2008. Accordingly, Plaintiff moves to
 9 modify the Order to allow Plaintiff additional time to prepare a motion for class certification.

10 **II. LEGAL ARGUMENT**

11 **A. Dates Sought For Amendment**

12 The Order set forth a timeline for the amendment of pleadings, discovery, class
 13 certification, and trial. Plaintiff seeks modification of the deadlines for the class certification
 14 briefing schedule. The class certification schedule was to begin with the July 7, 2008 deadline for
 15 Plaintiff to file her motion for class certification, and culminating in a hearing before this Court on
 16 September 5, 2008.¹⁵

17 Plaintiff seeks to extend the class certification briefing schedule by 75 days to September
 18 22, 2008, pending ADECCO's timely compliance with Plaintiff's pre-certification discovery
 19 requests and with further pre-certification discovery Plaintiff needs to conduct. Pursuant to Civil
 20 L.R. 16-2(d)(3), Plaintiff's proposed modification to the existing Order is attached hereto as

21 _____¹⁶

27 ¹³ Qualls Decl. ¶ 8, EX. G.

28 ¹⁴ Qualls Decl., ¶ 9, EX. H.

¹⁵ Id.

¹⁶ Id.

1 **B. Plaintiff's Counsel Has Met and Conferred With Opposing Counsel**

2 In compliance with Civil L.R. 16-2(d)(2), Plaintiff's counsel met and conferred regarding
3 the proposed modifications to the scheduling order on June 13, 20, and 24, 2008. Defense counsel
4 was willing to stipulate only to a 30-day extension of the class certification briefing schedule.¹⁷

5 **C. Good Cause Exists to Amend the Pretrial Preparation Order**

6 Rule 16(b)(4) of the Federal Rules of Civil Procedure permits a district court judge to
7 modify a scheduling order only when the moving party shows good cause. "Rule 16(b)'s 'good
8 cause' standard primarily considers the diligence of the party seeking the amendment. The district
9 court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the
10 party seeking the extension.'" Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.
11 2000) (internal citations omitted). While the potential for prejudice to the opposing party may
12 supply additional reasons to deny the motion, the focus of the inquiry is upon the moving party's
13 reasons for seeking modification. Id.

14 **D. Plaintiff Has Acted Diligently**

15 Good cause, as demonstrated through Plaintiff's diligence, exists here to modify the Order.
16 Plaintiff's counsel has been diligent in conducting discovery from the outset of this lawsuit.
17 California law permits a plaintiff to propound special interrogatories and demands for inspection
18 of documents on any date after 10 days following service of the complaint. Cal. Code Civ. Proc.
19 §§ 2030.020 (b), 2031.020 (b). A plaintiff may serve deposition notices on any date after 20 days
20 past service of the complaint. Cal. Code Civ. Proc. § 2025.210(b). The Complaint in this case
21 was served on ADECCO on August 17, 2007. Plaintiff's first set of special interrogatories and
22 demand for production of documents were served on ADECCO 10 days later, on August 27, 2007.
23 Plaintiff's notices of deposition were served on ADECCO 20 days later, on September 7, 2007.

24 After ADECCO removed the case to federal court, the Federal Rules of Civil Procedure
25 required Plaintiff to wait to resume discovery until after the parties held their Rule 26 conference
26 on February 1, 2008. Following the conference and the issuance of this Court's Pretrial
27 Scheduling Order, Plaintiff promptly resumed her attempt to depose ADECCO's representative on

28
¹⁷ Qualls Decl. ¶ 11.

1 the topics of compensation policies, meal period break policies, and meal period break time
2 record-keeping policies, serving such discovery on February 5, 2008. ADECCO did not produce
3 Ms. Hans, the designated representative on the noticed topics, until June 4, 2008, a delay of over
4 eight months from the originally noticed date, through no fault of the Plaintiff. Plaintiff did
5 everything in her power to obtain the testimony of Ms. Hans at the earliest possible time.

6 **E. The Delay in Obtaining Evidence is Problematic For Class Certification**

7 Despite Plaintiff's diligence in seeking discovery, Plaintiff did not learn the nature and
8 extent of ADECCO's meal period records that would have permitted plaintiff to bring a motion to
9 compel responses to interrogatories seeking contact information until Ms. Hans's deposition.
10 After removal to this Court, Plaintiff could not resume discovery until after the conference on
11 February 1, 2008. In the meantime, ADECCO had asserted that disclosure of putative class
12 members' contact information was burdensome. Plaintiff defined the class she sought to be
13 represented by entries on ADECCO's meal period records, thereby tying the disclosure of putative
14 class members' information to such records. Plaintiff did not know the nature of ADECCO's
15 meal period records until the Hans deposition was taken on June 4, 2008. At that time, Plaintiff
16 learned that most of ADECCO's records are electronic and thus easily searchable for the
17 information that is responsive to interrogatories seeking putative class member contact
18 information. Plaintiff can now file a motion to compel the disclosure of the class members'
19 contact information as Plaintiff will be able to demonstrate that the disclosure of the requested
20 information will not be burdensome to ADECCO.

21 The combination of ADECCO's failure to respond to Plaintiff's interrogatories in a timely
22 fashion and the repeated delays of Ms. Hans's deposition have left Plaintiff without the ability to
23 contact putative class members. Consequently, Plaintiff has not been able to obtain evidence from
24 a sampling of putative class members in support of a motion for class certification. The short time
25 period between the June 4 deposition and the July 7 deadline for filing a motion for class
26 certification coupled with the lack of interrogatory answers by ADECCO do not accord Plaintiff
27 the opportunity to procure such pre-certification evidence. If the Court grants this Motion to
28 modify the Pretrial Scheduling Order and extend the deadline for a motion for class certification

1 by 75 days to September 22, 2008, Plaintiff should have sufficient time to procure further
2 evidence in support of her motion for class certification, assuming that ADECCO supplies her
3 with full and complete responses to her interrogatories in a timely fashion.

4 Presently, Plaintiff's counsel is meeting and conferring with ADECCO's counsel regarding
5 the outstanding interrogatory responses. In the event that Plaintiff's meet-and-confer efforts fail,
6 Plaintiff will shortly file a motion to compel.

7 **F. ADECCO Will Not Be Prejudiced By Modification of the Order**

8 ADECCO will not suffer prejudice if the Court modifies the Order. No hardship will
9 result from permitting Plaintiff an additional 75 days within which to file a motion for class
10 certification. In contrast, Plaintiff would suffer hardship and prejudice if the requested extension
11 if not granted.

12 **III. CONCLUSION**

13 For the foregoing reasons, Plaintiff asks this Court to grant her motion to modify the
14 Pretrial Scheduling Order and extend the class certification briefing schedule by 75 days to
15 September 22, 2008. Plaintiff additionally asks that this Court schedule a case management
16 conference 60 days out from the date of the filing of this motion.

17
18 Date: June 27, 2008

QUALLS & WORKMAN, L.L.P.

19
20 By: 

21 Daniel H. Qualls
22 Attorney for Plaintiff
23
24
25
26
27
28

EXHIBIT B

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY,

Plaintiff,

v.

ADECCO, INC.,

Defendant

No. C-07-5604 MMC

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO MODIFY PRETRIAL
PREPARATION ORDER; VACATING
HEARING**

Before the Court is plaintiff's "Motion to Modify Pretrial Preparation Order," filed June 27, 2008. Defendant has filed partial opposition to the motion, to which plaintiff has replied. Having read and considered the papers filed in support of and in response to the motion, the Court deems the matter suitable for decision thereon, VACATES the hearing scheduled for August 1, 2008, and rules as follows.

In her motion, plaintiff seeks an order extending the deadline for filing her motion for class certification from July 7, 2008 to September 22, 2008. In its response, defendant states it does not oppose a 40-day extension of the deadline, i.e., it does not oppose the Court's extending the deadline to August 19, 2008, but that it opposes any further extension.

In light of defendant's non-opposition to an extension to August 19, 2008, and good cause appearing for a short further extension in light of Magistrate Judge Spero's order of

1 July 15, 2008, the Court will extend the deadline to August 31, 2008.

2 To the extent plaintiff seeks an extension beyond August 31, 2008, the Court will
3 deny the motion, without prejudice to plaintiff's seeking a further extension if, in light of the
4 subsequent course of discovery and/or any rulings that may be issued by Magistrate Judge
5 Spero, plaintiff can show good cause for such relief.

6 Accordingly, plaintiff's motion is hereby GRANTED in part and the Pretrial
7 Preparation Order is amended to extend, to August 31, 2008, the deadline for plaintiff's
8 filing a motion for class certification. In all other respects, the motion is DENIED without
9 prejudice.

10 **IT IS SO ORDERED.**

11
12 Dated: July 28, 2008


MAXINE M. CHESNEY
United States District Judge

EXHIBIT C

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13 *Attorneys for Plaintiff*

14
15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17

18 SHAVOTNAE GOLDSBY, AND ALL OTHERS
19 SIMILARLY SITUATED,

20 Plaintiff,

21 vs.

22 ADECCO, INC, and DOES 1 through 100, inclusive,

23 Defendants.
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25
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27
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No. CV 07 5604 MMC

PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO COMPEL
FURTHER RESPONSES TO
PLAINTIFF'S FIRST SET OF
SPECIAL INTERROGATORIES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF

DATE: August 15, 2008

TIME: 9:00 am

CTRM: 7

JUDGE: Hon. Maxine M. Chesney

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**NOTICE OF MOTION AND MOTION TO COMPEL FURTHER RESPONSES TO
PLAINTIFF'S FIRST SET OF SPECIAL INTERROGATORIES**

TO EACH PARTY AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 15, 2008 at 9:00 a.m. or as soon thereafter as the matter can be heard in Courtroom 7 of the above-entitled court, located at 450 Golden Gate Avenue, San Francisco, California, Plaintiff Shavotnae Goldsby (Plaintiff) will move the above-entitled court for an order compelling Defendant Adecco, Inc., (ADECCO) to provide further responses to Plaintiff's First Set of Special Interrogatories and overrule objections interposed to said discovery requests as set forth in Defendants' discovery responses. Good cause exists for the order required, as information sought is within the scope of permitted discovery. Any objections raised by Defendant are without merit.

This motion will be based on the Memorandum of Points and Authorities filed herewith, the Declaration of Daniel H. Qualls filed herewith, the complete files and records in this action, and such other argument and documents as may be presented at the hearing on this Motion.

Dated: July 3, 2008

QUALLS & WORKMAN, L.L.P.

By: /S/ Daniel H. Qualls
Attorneys for Plaintiff and all others similarly
situated

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

I. STATEMENT OF ISSUES TO BE DECIDED

Pursuant to Fed. R. Civ. P. 37(a)(1), Plaintiff brings this motion to compel for Defendant ADECCO's failure to provide full and complete responses to Plaintiff's First Set of Special Interrogatories. Defendant objected to Plaintiff's interrogatories on the grounds of relevance, that Defendant cannot be forced to disclose the requested information prior to this Court's determination on class certification, that the requested information violates the right to privacy, and that disclosure is too burdensome.

II. STATEMENT OF FACTS

Plaintiff is a former hourly employee of Defendant. While employed by ADECCO, Plaintiff contends she periodically failed to receive meal period breaks as required by California law. Plaintiff contends ADECCO maintains employee records depicting when hourly employees did not receive meal period breaks. Plaintiff contends ADECCO did not pay Goldsby an additional hour of compensation for missed meal period breaks. Plaintiff's employment with ADECCO terminated on December 26, 2006. Plaintiff filed a Class Action Complaint in California state court for violations on July 26, 2007.¹ Plaintiff's Complaint defines the class of employees she seeks to represent as: persons paid on an hourly basis for whom ADECCO records depict a meal period not taken who did not receive compensation payment by ADECCO for lack of said meal period.² Plaintiff served the Complaint on ADECCO on August 17, 2007.³

A. Plaintiff's Propounded Interrogatories and Defendant's Responses

On September 4, 2007, Plaintiff served her first sets of special interrogatories on ADECCO.⁴ ADECCO served its responses on November 1, 2007.⁵ The Special Interrogatories propounded by Plaintiff with Defendant's responses are set forth as follows:

¹ Declaration of Daniel H. Qualls In Support Of Plaintiff Shavotnae Goldsby's Motion To Compel Further Responses to Plaintiff's First Set of Special Interrogatories ("Qualls Decl.") ¶ 2, EX A.

² *Id.* at ¶ 10.

³ *Id.*, Proof of Service of Summons.

⁴ Qualls Decl., ¶ 3, EX. B.

⁵ Qualls Decl., ¶ 4, EX C.

1 **SPECIAL INTERROGATORY NO. 1**

2 Identify the name, address, e-mail address AND telephone number of all persons employed
3 by YOU in California [between] July 26, 2003 and the present paid on an hourly basis for whom
4 ADECCO records depict a meal period not taken. (The terms "YOU," "YOUR" or "YOURS"
5 refer to ADECCO and, if applicable, the agents, employees, officers, and directors of same or of
6 any subsidiary or divisions thereof, and their attorneys and those persons employed by their
7 attorneys.) (As used herein, the term "ALL" is synonymous with "ANY" and the term "OR"
8 means "AND/OR.")

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 1**

10 Defendant objects to this interrogatory on the grounds that it seeks information which is
11 not relevant to the subject matter involved in the pending action, and which is not reasonably
12 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
13 oppressive; that it calls for information that is protected by the right of privacy; that it is
14 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
15 phrase "depict a meal period not taken;" and that it is premature in that it seeks information
16 concerning potential class members prior to class certification.

17 Defendant further objects to this interrogatory on the grounds that it improperly seeks
18 information pertaining to liability and damages. This case is presently in the pre-certification
19 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
20 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
21 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
22 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
23 action before it has been determined by the Court that it is appropriate to proceed by way of a
24 collective action.

25 **SPECIAL INTERROGATORY NO. 2**

26 Identify the period of employment for each person identified in response to Special
27 Interrogatory No. 1.

1 **RESPONSE TO SPECIAL INTERROGATORY NO. 2**

2 Defendant objects to this interrogatory on the grounds that it seeks information which is
3 not relevant to the subject matter involved in the pending action, and which is not reasonably
4 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
5 oppressive; that it calls for information that is protected by the right of privacy; that it is
6 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
7 phrase "period of employment;" and that it is premature in that it seeks information concerning
8 potential class members prior to class certification.

9 Defendant further objects to this interrogatory on the grounds that it improperly seeks
10 information pertaining to liability and damages. This case is presently in the pre-certification
11 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
12 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
13 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
14 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
15 action before it has been determined by the Court that it is appropriate to proceed by way of a
16 collective action.

17 **SPECIAL INTERROGATORY NO. 3**

18 Identify the number of persons employed by YOU in California between July 26, 2003
19 AND the present paid on an hourly basis for whom ADECCO records depict a meal period not
20 taken.

21 **RESPONSE TO SPECIAL INTERROGATORY NO. 3**

22 Defendant objects to this interrogatory on the grounds that it seeks information which is
23 not relevant to the subject matter involved in the pending action, and which is not reasonably
24 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
25 oppressive; that it calls for information that is protected by the right of privacy; that it is
26 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
27 phrase "period of employment;" and that it is premature in that it seeks information concerning
28 potential class members prior to class certification.

1 Defendant further objects to this interrogatory on the grounds that it improperly seeks
2 information pertaining to liability and damages. This case is presently in the pre-certification
3 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
4 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
5 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
6 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
7 action before it has been determined by the Court that it is appropriate to proceed by way of a
8 collective action.

9 Subject to and without waiving these objections, Defendant responds as follows: During a
10 typical month, Adecco has approximately 10,000 employees that are assigned to work for
11 Adecco's clients in California.

12 **SPECIAL INTERROGATORY NO. 4**

13 Identify ALL persons employed by YOU in California paid on an hourly basis between
14 July 26, 2003, AND the present who complained to YOU REGARDING the absence of meal
15 period breaks. (As used herein, the term "REGARDING" means relating to, referring to,
16 pertaining to, reflecting, substantiating, evidencing, constituting, or in any manner whatsoever
17 logically or factually connected with the matter referenced, whether in whole or in part.)

18 **RESPONSE TO SPECIAL INTERROGATORY NO. 4**

19 Defendant objects to this interrogatory on the grounds that it seeks information which is
20 not relevant to the subject matter involved in the pending action, and which is not reasonably
21 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
22 oppressive; that it calls for information that is protected by the right of privacy; that it is
23 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
24 term "complained" and the phrase "absence of meal breaks;" and that it is premature in that it
25 seeks information concerning potential class members prior to class certification.

26 Defendant further objects to this interrogatory on the grounds that it improperly seeks
27 information pertaining to liability and damages. This case is presently in the pre-certification
28 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,

1 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
2 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
3 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
4 action before it has been determined by the Court that it is appropriate to proceed by way of a
5 collective action.

6 **SPECIAL INTERROGATORY NO. 5**

7 Identify the number of persons employed by YOU in California between July 26, 2003 and
8 the present, paid on an hourly basis.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 5**

10 Defendant objects to this interrogatory on the grounds that it seeks information which is
11 not relevant to the subject matter involved in the pending action, and which is not reasonably
12 calculated to lead to the discovery of admissible evidence; that it is overbroad, burdensome, and
13 oppressive; that it calls for information that is protected by the right of privacy; that it is
14 compound; that it is vague and ambiguous in that it cannot be ascertained what is meant by the
15 phrase "employed by YOU;" and that it is premature in that it seeks information concerning
16 potential class members prior to class certification.

17 Defendant further objects to this interrogatory on the grounds that it improperly seeks
18 information pertaining to liability and damages. This case is presently in the pre-certification
19 discovery phase. Questions pertaining to liability and damages issues are unduly oppressive,
20 harassing, and burdensome. Plaintiff will have the opportunity to propound discovery on liability
21 and damages issues if the proposes [sic] classes are certified. However, if Defendant is subjected
22 to such discovery prior to class certification, it will be forced to incur the burdens of a collective
23 action before it has been determined by the Court that it is appropriate to proceed by way of a
24 collective action.

25 Subject to and without waiving these objections, Defendant responds as follows: During a
26 typical month, Adecco has approximately 10,000 employees that are assigned to work for
27 Adecco's clients in California.
28

1 **B. Plaintiff's Attempts to Depose ADECCO and Continue Discovery**

2 On September 10, 2007, Plaintiff served notices seeking to take the depositions of
3 ADECCO's Persons Most Knowledgeable regarding 1) ADECCO policy and procedures
4 regarding issuance of final payroll checks to terminated California employees; 2) ADECCO
5 California meal period break policies; and 3) ADECCO meal period break record keeping
6 practices and procedures.⁶ Plaintiff noticed the depositions to proceed on September 25, 2007.⁷
7 ADECCO did not produce its Persons Most Knowledgeable on the noticed topics prior to serving
8 Plaintiff with its interrogatory responses.

9 On November 5, 2007, four days after serving its responses, ADECCO removed this case
10 to federal court.⁸ Consequently, the procedural maneuvering placed Plaintiff's ability to
11 commence discovery on hold until the parties held a Fed. R. Civ. P. 26 Initial Disclosure
12 Conference on February 1, 2008.⁹ Although Plaintiff just received the interrogatory responses
13 detailed above at the time of removal, Plaintiff had not yet taken the deposition of ADECCO's
14 representative on the noticed topics, and thus had no knowledge of ADECCO's meal period
15 recordkeeping practices. Removal to federal court coupled with the failure of ADECCO to
16 produce its representative in a timely manner meant that Plaintiff did not have an opportunity at
17 the time Plaintiff received ADECCO's responses to file a motion to compel, given the dictates of
18 Rule 26.

19 Following the Rule 26 Conference, on February 5, 2008, Plaintiff served Fed. R. Civ. P.
20 30(b)(6) deposition notices seeking the same knowledgeable persons from ADECCO as
21 previously noticed on September 10, 2007, in the state court action.¹⁰ This Court entered its
22 Pretrial Scheduling Order on February 15, 2008, setting November 21, 2008, as the non-expert
23 discovery cutoff date.¹¹ Plaintiff initially noticed the depositions for September 25, 2007, re-
24 noticed them for March 5, 2008, and then continued them again to occur on May 22, 2008 per
25

26 ⁶ Qualls Decl., ¶ 5, EX. D.

27 ⁷ *Id.*

28 ⁸ Qualls Decl., ¶ 6, EX. E.

⁹ *Id.*

¹⁰ Qualls Decl., ¶ 7, EX. F.

¹¹ Qualls Decl. ¶ 8, EX. G.

1 ADECCO's request. On February 29, 2008, ADECCO'S counsel first indicated that the March
 2 5th date was unacceptable.¹² The parties agreed to reschedule the deposition date for April 30,
 3 2008, and then rescheduled again to May 22, 2008.¹³ As the May 22 date approached, ADECCO
 4 again sought to reschedule the depositions for the fourth time.¹⁴ On June 4, 2008, Plaintiff's
 5 counsel took the deposition of ADECCO's representative, Kim Hans, Vice President of
 6 Operations, Southwest Division on the noticed topics. At this deposition, Plaintiff learned the
 7 nature of Defendant's recordkeeping practices for the first time: the various methods by which
 8 ADECCO hourly employees record their meal periods and the existence of ADECCO's records
 9 thereof.¹⁵

10 Plaintiff learned that most of ADECCO's time records are electronic and thus easily
 11 searchable. This is the type of information sought by and is responsive to interrogatories seeking
 12 putative class member contact information. ADECCO maintains both a website, time.adecco.com
 13 (TAC), and a telephone system called ATS wherein its employees enter their daily hours
 14 worked.¹⁶ Neither the TAC site nor the ATS system provide any information regarding whether
 15 an employee took a meal break period, as the data for both time entry methods reflects only the
 16 total number of hours an employee worked.¹⁷ ADECCO employees who use paper time cards to
 17 record their time typically submit their time cards to ADECCO, and then a designated employee
 18 inputs the time card data into the TAC site.¹⁸ The website is the same one used by employees who
 19 input time themselves, and does not reflect meal period break data.¹⁹ Another group of ADECCO
 20 employees use hard copy punch cards and a time clock at the worksite to record their time.²⁰
 21 ADECCO collects this information and inputs it into the TAC site, again without capturing any
 22 data regarding meal period breaks.²¹ At other work sites where the employees use the client's own

23 ¹² Qualls Decl., ¶ 9, EX H.

24 ¹³ *Id.*

25 ¹⁴ *Id.*

26 ¹⁵ Qualls Decl. ¶ 10, EX. I, June 4, 2008, Deposition of Kim Hans ("Hans Depo.") at 13:1-21, 17:11-18:3, 18:17-19:21, 21:25-23:7, 23:17-25:3, 26:22-27:24, 27:25-28:7, 33:9-12, 34:19-21, 36:6-9, 43:3-44:18, 47:3-14.

27 ¹⁶ Hans Depo., at 12:10-16, 13:4-7, Qualls Decl. EX I.

28 ¹⁷ Hans Depo., at 14:10-21, 17:11-24, 26:22-27:24, 29:15-22, Qualls Decl. EX I.

¹⁸ Hans Depo., 33:20-34:23, Qualls Decl. EX I.

¹⁹ Hans Depo., 36:6-9, 45:2-9, Qualls Decl. EX I.

²⁰ Hans Depo., 40:6-21, Qualls Decl. EX I.

²¹ Hans Depo., 43:19-44:4, Qualls Decl. EX I.

1 time clock, some clients print out time clock data for ADECCO's input at the TAC site.²² In short,
 2 ADECCO's record keeping practices ensure that the majority of employee time record data it
 3 collects is maintained on two electronic systems. Neither system's records depict whether an
 4 employee took a timely meal period break.

5 **C. Plaintiff's Unsuccessful Meet and Confer Attempts**

6 As required by Fed. R. Civ. P. 37(a)(1) and L.R. 37-1(a), Plaintiff's counsel met and
 7 conferred with Defendant's counsel via telephone on June 20 and 24, 2008, to attempt to resolve
 8 the parties' differences regarding production of the putative class members' contact information
 9 and the related information Plaintiff requested via interrogatories. These attempts were
 10 unsuccessful.²³ Accordingly, Plaintiff now brings this motion to compel ADECCO's further
 11 responses to the interrogatories.

12 **III. ARGUMENT**

13 **A. Plaintiff's Interrogatories Are Within Scope Of Permitted Discovery**

14 ADECCO first objects to Plaintiff's interrogatories on the basis that the information sought
 15 is both irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
 16 Parties in a civil action may obtain discovery of any non-privileged information that is "relevant to
 17 the subject matter involved in the pending action. . ." or is "reasonably calculated to lead to the
 18 discovery of admissible evidence" at trial. Fed. R. Civ. P. 26 (b) (1) (Rule 26). Courts broadly
 19 construe the scope of discovery. Oppenheimer Fund v. Sanders, 437 U.S. 340 (1978). A court
 20 should consider a request for discovery relevant if there is any possibility that the information
 21 sought may be relevant to the claim or defense of any party. Hammond v. Lowe's Home Ctrs.,
 22 Inc., 216 F.R.D. 666, 670 (D. Kan. 2003). A court therefore should allow a request for discovery
 23 unless it is clear that the information sought can have no possible bearing on the claim or defense
 24 of a party. Id.

25 Plaintiff's Complaint alleges claims under the California Labor Code for Defendant's
 26 failure to provide meal period breaks and compensation for missed meal period breaks on behalf

28 ²² Hans Depo., 48:3-18, Qualis Decl. EX H.

²³ Qualis Decl. ¶ 11.

1 of herself and similarly situated ADECCO employees. To proceed, Plaintiff must make a
2 threshold showing that her claims give rise to predominant issues common to the class she seeks
3 to represent. Plaintiff's request for the names and addresses of ADECCO employees is within the
4 scope of permitted discovery because the information sought will enable Plaintiff to ascertain and
5 establish that Plaintiff and such employees are similarly situated. The scope of Rule 26 is not
6 limited by the Rule 23 proceeding. This objection is without merit.

7 **B. The Supreme Court Recognizes The Right to Pre-Certification Discovery of**
8 **Putative Class Member Contact Information**

9 ADECCO further objected on the ground that Plaintiff improperly seeks information
10 regarding liability and damages prior to class certification. Class certification is not a preliminary
11 requirement to the release of putative class members' contact information. In Hoffmann-La Roche
12 Inc. v. Sperling, 493 U.S. 165 (1989), the Supreme Court upheld a discovery order requiring the
13 defendant to provide the names and addresses of potential parties prior to authorization to proceed
14 as a representative action or class certification. Id. at 170. "[T]he Supreme Court did not require a
15 class certification prior to production of the list. It first ruled that production of the list of co-
16 workers was proper." Bailey v. Ameriquet Mortg. Co., 2002 U.S. Dist. LEXIS 1363 (D. Minn.
17 2002) ("The District Court was correct to permit discovery of the names and addresses of the
18 discharged employees."). As explained "[i]n general, at the precertification stage, discovery in a
19 putative class action is limited to certification issues (citation omitted) . . . However, the
20 merits/certification distinction is not always clear. Facts relevant to the class action determination
21 and definition may largely be the same as those relevant to the merits of the case." (Citation
22 omitted). Accordingly, "[a] District Court should be chary of restricting communications with
23 class members, and should do so only upon a 'clear record and specific findings that reflect a
24 weighing of the need for a limitation and the potential interference with the rights of the parties.'" (citation omitted). Barnes v. Julien J. Studley, Inc., 1989 U.S. Dist. LEXIS 18349, 5-6 (D. D.C.
25 1989).

26
27 Courts likewise affirm the right to pre-class certification discovery of potential class
28 member names and addresses in cases proceeding under Rule 23. Whitworth v. Chiles Offshore

1 Corp., 1992 U.S. Dist. LEXIS 17844 (E.D. La. 1992); Wallman v. Tower Air, Inc., 189 F.R.D.
 2 566, 569 (N.D. Cal. 1999). (See, also, United States v. Cook, 795 F.2d 987 (Fed. Cir. 1986) (suit
 3 against United States seeking liquidated damages for failure to pay overtime wages; pre-
 4 authorization discovery order granted compelling defendant to disclose names and address of other
 5 federal firefighters and law enforcement personnel); Bailey v. Ameriquest Mortg. Co., *supra* (pre-
 6 authorization discovery of names and addresses of potential plaintiffs in FLSA overtime pay case
 7 allowed); Miklos v. Golman-Hayden Cos., Inc., 2000 U.S. Dist. LEXIS 22352 (S.D. Ohio 2000)
 8 (plaintiff's pre-authorization motion to compel production of names and addresses of potential
 9 party employees of defendant in FLSA wage proceeding granted); Tucker v. Labor Leasing, Inc.,
 10 155 F.R.D. 687 (M.D. Fla. 1994) (plaintiff's pre-authorization motion to compel seeking names of
 11 all employees of defendant who were due overtime compensation granted)). The clear weight of
 12 authority on pre-certification production of putative class members' contact information is in favor
 13 of Plaintiff.

14 C. Privacy Objections Do Not Bar Plaintiff's Discovery

15 A federal court exercising diversity jurisdiction must apply the substantive law of the state
 16 in which the court sits. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 78 (1938). Accordingly, this
 17 Court must look to California law to determine the merit of ADECCO's refusal to provide the
 18 contact information of putative class members based on the right to privacy. California courts
 19 confirm that there is no basis for this assertion.

20 The California Supreme Court in Pioneer Electronics (USA) Inc. v. Superior Court, 40 Cal.
 21 4th 360 (2007), affirmed that no violation of the right to privacy occurs when a defendant releases
 22 putative class members' contact information. In Pioneer, the Supreme Court observed: "Contact
 23 information regarding the identity of potential class members is generally discoverable, so that the
 24 lead plaintiff may learn the names of other persons who might assist in prosecution of the case.
 25 Such disclosure involves no revelation of personal or business secrets, intimate activities, or
 26 similar private information, and threatens no undue intrusion into one's personal life..." *Id.* at
 27 373. Here, Plaintiff requires the same discovery to obtain evidence from a sampling of putative
 28

1 class members to support a motion for class certification. Given the instruction of the Pioneer
 2 court, ADECCO has no basis for its refusal to produce the information requested.

3 In Puerto v. Superior Court, 158 Cal. App. 4th 1242 (2008), the most recent California case
 4 addressing the question of discovery of putative class member identity and contact information, the
 5 Court held putative class member contact information is fully discoverable, unimpeded by notice
 6 or 'opt-out' procedures. The court stated that the identification of potential witnesses is within the
 7 scope of proper discovery under Cal. Code of Civ. Proc. §2017.010.²⁴ Id. at 1249. The court
 8 explained that although the potential witnesses, who also worked for the employer, possess a
 9 legitimate expectation that the employer will not disclose their addresses and telephone numbers, it
 10 is also reasonable to conclude that they might want to share this information with coworkers who
 11 sought relief for violations of employment laws. Id. at 1252-53. Hence, according to Puerto, the
 12 requested information, while personal, was not particularly sensitive, there were no unusual
 13 circumstances suggesting that the information should be restricted and the disclosure of the
 14 requested addresses and telephone numbers would not significantly intrude on the potential
 15 witnesses' right to privacy under Cal. Const., art. I, § 1. Id. at 1254-55. As a result, the Court
 16 held that disclosure by Defendant of putative class member contact information did not require
 17 prior notice to class members or an opt-out procedure to protect privacy rights. Id. at 1259.

18 **D. Production of Class Members' Contact Information Is Not Burdensome**

19 As its last objection, ADECCO claims that production of the information sought is overly
 20 burdensome. ADECCO did not elaborate as to what burden disclosure of the information might
 21 cause. Plaintiff defined the class she sought to represent by entries on ADECCO's meal period
 22 records, thereby tying the disclosure of putative class members' information to such records. After
 23 Plaintiff's counsel deposed Ms. Hans on ADECCO's time record keeping practices, Plaintiff
 24

25 ²⁴ Cal. Code Civ. Proc. § 2017.010 provides in part: "any party may obtain discovery regarding any matter, not
 26 privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion
 27 made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the
 28 discovery of admissible evidence." While Fed. R. Civ. P. 26(b)(1) governs the scope of discovery in federal court, it is
 similarly broad in language: "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
 party's claim or defense — including the existence, description, nature, custody, condition, and location of any
 documents or other tangible things and the identity and location of persons who know of any discoverable matter."
 For the purpose of analyzing whether the disclosure of putative class members' contact information is within the
 scope of discovery, the Court should consider both statutes one and the same.

1 learned that ADECCO stores a large portion of its time records electronically. Plaintiff further
 2 learned that ADECCO's electronic record keeping systems, the time.adecco.com website and the
 3 ATS telephone system, do not actually capture any data regarding meal period breaks, only the
 4 total number of hours worked on a given day. Consequently, ADECCO does not have to
 5 undertake an arduous search to discover which of its electronically-stored time records belong to
 6 putative class members, as virtually all of its electronic time records input via either the website or
 7 the telephone system from the class period do not depict a meal period break.

8 All ADECCO must do to respond to Plaintiff's interrogatories is to search its systems for
 9 the electronic time records from the class period and compile a list of people whose records match
 10 the information requested in Special Interrogatory No. 1: the putative class. From there,
 11 ADECCO can produce contact information for each putative class member, as well as the other
 12 requested information: the period of employment for each putative class member (No. 2) and the
 13 number of people in the putative class (No. 3). The information requested in No. 4 regarding
 14 identification of the persons who complained to ADECCO regarding the absence of meal period
 15 breaks likely overlaps with the persons identified as putative class members. ADECCO also can
 16 easily locate the information requested in No. 5 regarding the total number of persons employed by
 17 ADECCO during the class period by searching its own electronic systems. Clearly, ADECCO's
 18 claim that the disclosure of this information is burdensome is also without merit.

19 III. CONCLUSION

20 Accordingly, for the reasons stated, Plaintiff requests that the Court grant the motion and
 21 order ADECCO to produce the requested information.

22
 23 Dated: July 3, 2008

QUALLS & WORKMAN, L.L.P.

24
 25 By: /S/
 26 Daniel H. Qualls
 27 Attorneys for Plaintiff and all others similarly
 28 situated

EXHIBIT D

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY,

No. C 07-5604 MMC

Plaintiff

v.

**ORDER REFERRING TO MAGISTRATE
JUDGE PLAINTIFF'S MOTION TO
COMPEL**

ADEECO, INC.,

Defendant

Pursuant to Civil Local Rule 72-1, plaintiff's "Motion to Compel Further Responses to Plaintiff's First Set of Special Interrogatories," filed July 3, 2008, and all further discovery motions, are hereby REFERRED to a Magistrate Judge to be heard and considered at the convenience of the assigned Magistrate Judge's calendar.

Counsel will be advised of the date, time and place of the next appearance by notice from the assigned Magistrate Judge's chambers.

The August 15, 2008 hearing noticed before the undersigned is VACATED.

IT IS SO ORDERED.

Dated: July 7, 2008



MAXINE M. CHESNEY
United States District Judge

EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY,

Case No. C-07-05604 MMC (JCS)

Plaintiff(s),

v.

**NOTICE OF REFERENCE; ORDER
DENYING MOTION TO COMPEL;
ORDER TO MEET AND CONFER**

ADECCO, INC.,

Defendant(s).

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matter has been referred to Magistrate Judge Joseph C. Spero for resolution of Plaintiff's Motion to Compel Further Responses to Plaintiff's First Set of Special Interrogatories (the "Motion") [Docket No. 21], and all future discovery matters.

IT IS HEREBY ORDERED that the Motion is DENIED for failure of counsel to adequately meet and confer. IT IS HEREBY FURTHER ORDERED that lead trial counsel for both parties shall meet and confer **in person** no later than July 29, 2008. Within five (5) business days of their meet-and-confer session, counsel shall provide a detailed Joint Letter to the Court. This Joint Letter shall include a description of every issue in dispute and, with respect to each such issue, a detailed summary of each party's final substantive position and its final proposed compromise on each issue.

LAW AND MOTION HEARING PROCEDURES

Civil law and motion is heard on Friday mornings, at 9:30 a.m., Courtroom A, 15th Floor, United States District Court, 450 Golden Gate Avenue, San Francisco, California, 94102.

In the event a **discovery dispute** arises, IT IS HEREBY ORDERED that before filing any discovery motion before this Court, the parties must comply with the following:

- 1 1. Lead trial counsel for both parties must meet and confer *in person* regarding the
2 matter(s) at issue. This meeting shall occur after other efforts to resolve the dispute,
3 such as telephone, e-mail, teleconference, or correspondence, have been unsuccessful.
4 Once those efforts have proved unsuccessful, any party may demand a meeting of
5 lead trial counsel to resolve a discovery matter. Such a meeting shall occur within ten
6 (10) business days of the demand. The locations of the meetings shall alternate. The
7 first meeting shall be at a location selected by counsel for Plaintiff(s). If there are any
8 future disputes, the next such meeting shall be held at a location to be determined by
9 counsel for Defendant(s), etc.
- 10 2. Within five (5) business days of the in-person meeting between lead trial counsel
11 referred to above, the parties shall jointly file a detailed letter with the Court, which
12 will include the matters that remain in dispute, a detailed substantive description of
13 each side's position on each such issue, and a description of each side's proposed
14 compromise on each such issue. In the absence of permission from the Court, the
15 letter may not exceed five (5) pages.
- 16 3. After the Court has received the joint letter, the Court will determine what future
17 proceedings, if any, are necessary.

18 In the event that the parties continue to be unable to resolve the matters regarding the timing
19 and scope of discovery, the Court will consider what future actions are necessary. These actions
20 may include the following: (1) sanctions against a party failing to cooperate in the discovery process
21 and meet and confer in good faith, as required by this Order, the Federal Rules of Civil Procedure,
22 and the Local Rules of this Court; and/or (2) requiring the Chief Executive Officers of each party to
23 attend the in-person, meet-and-confer sessions described above. The Court is not entering either of
24 these matters as an Order of the Court at this time, and fully expects counsel to meet their
25 obligations under this Order and under the Local Rules.

26 Regardless of whether the Court reschedules a hearing date, all opposition and reply papers
27 shall be timely filed according to the originally noticed hearing date, pursuant to Civil L. R. 7-3.
28

1 A party or counsel has a continuing duty to supplement the initial disclosure when required
2 under Fed. R. Civ. P. 26(e)(1).

3 All filings of documents relating to motions referred to the undersigned shall list the civil
4 case number and the district court judge's initials followed by the designation "(JCS)".

5 **ELECTRONIC FILING AND COURTESY COPIES**

6 Please refer to Civil L. R. 5-4 and General Order No. 45 for the Northern District of
7 California for information relating to electronic filing procedures and requirements.

8 BEFORE NOON ON THE NEXT BUSINESS DAY FOLLOWING THE ELECTRONIC
9 FILING, THE PARTIES ARE REQUIRED TO LODGE DIRECTLY WITH CHAMBERS ONE
10 PAPER COPY OF EACH DOCUMENT, WHICH IS TO BE DESIGNATED "JCS'S CHAMBERS"
11 COPY."

12 The failure of counsel or a party to abide by this Order may result in sanctions pursuant to
13 Fed. R. Civ. P. 16(f).

14 IT IS SO ORDERED.

15
16 Dated: July 15, 2008


JOSEPH C. SPERO
United States Magistrate Judge

United States District Court
For the Northern District of California

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EXHIBIT F



July 30, 2008

Honorable Joseph C. Spero,
United States Magistrate Judge
United States District Court, Northern District of California
450 Golden Gate Avenue, Courtroom A, 15th Floor
San Francisco, California 94102

Re: Shavotnae Goldsby, et. al. v. Adecco, Inc., et. al.
Case Number: CV 07 5604 MMC (JCS)

Your Honor:

Plaintiff's Position Regarding Interrogatory No. 1.

Lead counsel for Plaintiff, Daniel H. Qualls, and lead counsel for Defendant, Charles F. Barker, met in person on July 23, 2008, to discuss disputed discovery as addressed by Plaintiff's Motion filed on July 3, 2008 (MCM). Counsel resolved disputes regarding Plaintiff's interrogatories numbers 2, 3, 4, and 5.

Plaintiff's Interrogatory No. 1 requesting the name and contact information of putative class members, remains in dispute. At the MCM, Defendant's counsel informed Plaintiff that current California hourly employees of Defendant Adecco exceed 45,000 persons. Plaintiff's counsel proposed that Defendant provide 500 names of Adecco California hourly employees, randomly selected, for each of the five years in the proposed class period, for a total of 2,500 names limited to those hourly employees who submitted electronic timecards. Defendant proposed that a notice be sent to putative class members informing them of the right to object to release of contact information as adopted by the court in *Belair-West Landscape, Inc. v. Superior Court*, 149 Cal. App. 4th 554 (2007). Plaintiff proposed a protective order limiting dissemination of contact information to Plaintiff's counsel, investigators, and experts, which in conjunction with Plaintiff's 2,500 member sample proposal, constituted Plaintiff's final proposed compromise.¹ On July 28, 2008, Defendant informed Plaintiff that it would agree to provide contact information for putative class members working at two California customer sites only, Waste Management, Inc. and the Wine Lab, sites at which Plaintiff worked as an Adecco temporary employee. Plaintiff informed Defendant this proposal was not acceptable, and

¹ At Defendant's request, on July 30, 2008, Plaintiff clarified her sample proposal and proposed use of an Excel program by Defendant to randomly select the proposed sample for employees ID number.

Honorable Joseph C. Spero
 July 30, 2008
 Page 2

Defendant informed Plaintiff that Defendant would not provide contact information for putative class members absent a *Belaire* notice procedure.

Federal courts have long allowed for the disclosure of names and contact information of putative class members. *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 101 S.Ct. 2193, 68 L.Ed.2d 693 (1981); *Putnam v. Eli Lilly & Co.* 508 F.Supp.2d 812, 814 (C.D. Cal. 2007); *Jimenez v. Domino's Pizza, LLC* 2006 U.S. Dist. LEXIS 66510 (C.D. Cal. 2006), *Wiegele v. Fedex Ground Package Sys.* 2007 U.S. Dist. LEXIS 9444 (S.D. Cal. 2007).

The operative facts and reasoning in *Putnam*, *Jimenez*, and *Wiegele*, are applicable here. As in *Putnam*, *Jimenez*, and *Wiegele*, Plaintiff seeks contact information pertaining to all putative class members as Plaintiff seeks to certify a statewide class of Adecco hourly employees, not just those employees who worked at two Adecco client workplaces in California. Defendant's privacy concerns are outweighed by Plaintiff's legitimate need for the requested information to determine whether common questions of law or fact exist and if Plaintiff's claims are typical of potential plaintiffs and class members.

Defendant's insistence upon a *Belaire* notice procedure should be rejected on several grounds. First, privacy concerns can be properly addressed by a protective order limiting dissemination of contact information to Plaintiff's counsel, her investigators and experts. *Putnam v. Eli Lilly & Co.* 508 F.Supp.2d 812, 814 (C.D. Cal. 2007), *Jimenez v. Domino's Pizza*, 2006 U.S. Dist. LEXIS 55510, at pg. 8 (C.D. Cal. 2006).; *Weigele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444 (S.D. Cal. 2007). Second, a *Belaire* notice will cause significant prejudice to Plaintiff. A *Belaire* notice entails a three step process typically requiring 6 weeks or more to complete before contact information is provided to the requesting plaintiff.² On July 28, 2008, the Court granted in part and denied in part Plaintiff's motion to extend the class certification motion filing deadline to August 31, 2008, without prejudice to Plaintiff's seeking a further extension in light of any rulings that may issue by this Court.³ Adoption of a *Belaire* notice procedure will effectively preclude use of putative class member contact information in support of Plaintiff's request for class certification.

² See, Order Re: Privacy Notice/Letter To Putative Class Members, *Wallace Ralston v. US-Reports, Inc.*, Alameda County, Superior Court Case No. RG07328773, Exhibit A, attached hereto.

³ See, July 28, 2008, Order Granting In Part And Denying In Part Plaintiff's Motion To Modify PreTrial Preparation Order: Vacating Hearing, Exhibit B, attached hereto.

Honorable Joseph C. Spero
July 30, 2008
Page 3

Accordingly, Plaintiff respectfully requests an order of the Court directing Defendant to provide contact information for putative class members as set forth in Plaintiff's final proposed compromise to Defendant's counsel on July 24, 2008, by August 8, 2008.

Position of Defendant Adecco Regarding Interrogatory No. 1

Defendant is submitting its position statement without seeing Plaintiff's statement because Plaintiff's counsel did not want to share the written statements. In this class action, Plaintiff alleges that Defendant Adecco failed to provide meal periods to its temporary employees in California. Adecco is a temporary services firm that supplies temporary employees to numerous companies in California. Plaintiff Goldsby worked at two of Adecco's California customers. Interrogatory No. 1 requested the home contact information for all putative class members "for whom Adecco records depict the meal period not taken." Adecco objected on various grounds to this interrogatory, including that it was burdensome and overbroad and thus sought irrelevant information, and that it sought information not needed for class certification. Defendant also objected that it sought private information.

On March 27, 2008, the attorneys for Adecco explained to Plaintiff's attorney that this interrogatory was extremely burdensome as the only way for Adecco to determine those persons for whom its records did not show the meal period is to do a manual search of thousands upon thousands of time cards. In 2007 alone, Adecco employed over 43,000 temporary employees in California. To answer Interrogatory No. 1 for just 2007, Adecco would have to manually review the time records for these 43,000 different employees, for each week that the employees worked in 2007. For the week ending July 13, 2008, there were 9060 temporary employees on the Adecco payroll in California. That is 9060 different time records to be reviewed to determine whether the records did or did not depict a meal break. The same search would be required for the other years in the class period from July 2003 to the present.

Defendant further believes that the information sought by this interrogatory is not needed at this time, considering the burden. Based on discussions between counsel, Plaintiff has claimed that this class can be both certified and proven through documents. Defendant has produced its relevant policies and Plaintiff has taken the PMK depositions. Defendant is answering the question of the total number of hourly employees employed for the class period in

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California. It is unclear to Defendant how the identification of the home contact information of these potential class members will help establish class certification since Plaintiff contends that her case will be proved through documents. At the recent meeting when Defendant asked Plaintiff for an explanation of the theory under which Plaintiff was proceeding in light of *Brinker Restaurant Corp. v. Superior Court*, __ Cal.App.4th __ (08 SOS 4356, July 23, 2008), Plaintiff's counsel indicated that he would not explain his theory at that time but that Defendant would see the argument in the motion for class certification. The *Brinker* case held that the employer did not need to ensure that the meal period was taken but rather the employer only needed to make such breaks available. The court also held that class treatment was inappropriate because of the need to determine on an individual basis the reasons why the meal period was missed.

Defendant also objected to the disclosure of the home addresses and phone numbers on privacy grounds pursuant to *Pioneer Electronics v. Superior Court*, 40 Cal. 4th 360 (2007); *Belaire West Landscape v. Superior Court*, 149 Cal. App. 4th 554 (2007); and *Best Buy Stores v. Superior Court*, 137 Cal.App. 4th 772 (2006). These cases found a privacy right in the home addresses and phone numbers of the putative class members. These courts ordered that the potential class members be given a chance to object to the disclosure of their information before the contact information was given to the plaintiff's counsel. This state right of privacy is applicable to this proceeding pursuant to Fed.R.Evid. 501. See, *Star Editorial v. USDC*, 7 F.3d 856 (9th Cir. 1993); *Salazar v. Avis Budget Group, Inc.*, 2007 WL 2990281 (S.D. Cal. 2007).

In an effort to compromise and resolve this dispute, Adecco has proposed to provide to a third party administrator the home contact information for all those employees who were assigned to the two Adecco customers for whom plaintiff worked: Wine Lab and Waste Management. The home contact information will be provided through a third party administrator who would mail a letter to these people advising them that the plaintiff's counsel sought their home contact information and, if they did not want it disclosed, they would have to return a postcard. This is the process that has been adopted to protect the privacy rights guaranteed by the California Constitutional Right of Privacy. See *Pioneer* and *Belaire West* cases. Plaintiff does not want to utilize a third party administrator but rather wants Adecco to submit the home

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addresses and phone numbers directly to Plaintiff. Plaintiff's proposal requires Adecco to violate the privacy rights of the persons who are not parties to this case.

Plaintiff requests a "random sample" of about 2,000 Adecco temporary employees. Defendant disagrees with this approach. Defendant has proposed to produce the home contact information for those persons who worked at the same companies for whom plaintiff also worked. Adecco is a supplier of temporary employees to other companies who have their own work standards and meal break rules or procedures. Defendant believes that the persons who worked at the same two customers as Plaintiff may have been subject to the same rules for meal breaks. The two customers (Wine Lab and Waste Management) were supplied employees by Adecco for 47 different physical locations. There were almost 1800 different assignments for which Adecco supplied employees to these two customers. The employees supplied by Adecco to other customers would have been working under different rules for meal breaks and thus could not offer evidence for class certification.

Plaintiff asked Defendant if it could supply the home contact information by August 8. It can do so for the contact information for the employees who worked at Wine Lab and Waste Management. As to a "random sample", Defendant asked Plaintiff's counsel on July 29 for the parameters and method for the sampling. Defense counsel did not get an answer to that question until July 30 at 11:30. Plaintiff requested that the sampling be done from an Excel spreadsheet. Defense counsel does not know whether the entire employee population of California employees is on an Excel spreadsheet or can be readily transferred to such a spreadsheet. At the time of filing this letter, defense counsel has been unable to obtain an answer for the time frame in which the contact information for the random sample, as defined by Plaintiff, can be obtained.

Respectfully submitted,

QUALLS & WORKMAN, LLP

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Attorney For Plaintiff

**SHEPPARD, MULLIN, RICHTER
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Charles F. Barker
Attorney For Defendant

EXHIBIT G

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, ET AL.,

Case No. C-07-05604 MMC (JCS)

Plaintiff(s),

v.

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
COMPEL [Docket No. 28]**

ADECCO, INC., ET AL.,

Defendant(s).

The parties have filed a joint letter dated July 30, 2008, [Docket No. 28] which the Court interprets as a motion to compel further responses to Plaintiff's interrogatory number one (the "Motion"). The Court heard oral argument on August 1, 2008. For the reasons stated on the record and good cause appearing, IT IS HEREBY ORDERED as follows:

Not later than August 11, 2008, Defendant Adecco shall provide name and contact information, other than home telephone numbers, for 2,500 hourly employees that are members of the putative class. The names shall be selected randomly, with 500 names taken from each of the five years of the proposed class. All such information shall be provided on an "Attorneys' Eyes Only" basis. Plaintiff's counsel may not initiate contact with any of these 2,500 hourly employees except by letter, which shall be approved either by defense counsel or by the Court. The letter may invite the hourly employees to contact Plaintiff's counsel.

Except as so expressly granted, the Motion is DENIED.

IT IS SO ORDERED.

Dated: August 5, 2008


JOSEPH C. SPERO
United States Magistrate Judge

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

SHAVOTNAE GOLDSBY, AND ALL OTHERS
 SIMILARLY SITUATED,

Plaintiff,

vs.

ADECCO, INC, and DOES 1 through 100, inclusive,

Defendants.

No. CV 07 5604 MMC

**PLAINTIFF SHAVOTNAE
 GOLDSBY'S OBJECTIONS TO
 MAGISTRATE JUDGE SPERO'S
 AUGUST 5, 2008, ORDER GRANTING
 IN PART AND DENYING IN PART
 PLAINTIFF'S MOTION TO COMPEL**

Pursuant to Federal Rule of Civil Procedure 72(a) and Northern District Local Rule 72-2,
 Plaintiff Shavotnae Goldsby ("Plaintiff") hereby objects to Magistrate Judge Spero's August 5,
 2008, Order Granting In Part And Denying In Part Plaintiff's Motion to Compel. Specifically,

1 Judge Spero's Order violated Plaintiff's First Amendment rights by placing an unqualified prior
2 restraint on her ability to communicate with putative class members and witnesses.

3 Plaintiff acknowledges that Judge Spero's Order granted Plaintiff's counsel's proposal for
4 the scope, selection, and number of names Defendant was to produce. Yet, without any evidence
5 of misconduct on the record or any suggestion from Defendant Adecco, Inc.'s ("Defendant" or
6 "Adecco") counsel, Judge Spero's Order specifically prohibited Plaintiff's counsel from initiating
7 communication with these witnesses via telephone and relieved Defendant from production of the
8 putative class members' telephone numbers. Plaintiff's Objection raises one question: may a
9 Court lawfully restrict a party's ability to communicate with a material witness without evidence
10 giving rise to such a restriction?

11 I. PROCEDURAL BACKGROUND

12 Plaintiff served her first set of special interrogatories on Defendant on September 4, 2007.
13 The interrogatories sought putative class member contact information and related information,
14 including the number of hourly employees Defendant employed during the applicable time period
15 of the case. Defendant served its responses on November 1, 2007, just prior to removal of this
16 action to federal court. Defendant objected to disclosure of the contact information, which was to
17 include names, addresses, and telephone numbers for each hourly employee employed during the
18 proposed class period, on the grounds that such disclosure was burdensome and violated the
19 employees' right of privacy. After obtaining further information regarding Adecco's meal break
20 period record keeping policies and procedures, Plaintiff filed a Motion to Compel Further
21 Responses To Plaintiff's First Set of Interrogatories in this Court on July 3, 2008. The Court
22 assigned Magistrate Judge Spero to hear the matter.

23 Pursuant to Judge Spero's standing order, the parties met and conferred in person
24 regarding the outstanding responses on July 23, 2008, but were unable to resolve their dispute over
25 the production of the putative class members' contact information. The parties then submitted a
26 five-page letter to Judge Spero summarizing the parties' relative positions on the issue. A true and
27 correct copy of the parties' joint letter is attached hereto as Exhibit A. Judge Spero held a
28 telephonic conference with the parties on August 1, 2008, after which Judge Spero ordered

1 Defendant to produce the contact information per Plaintiff's counsel's proposal: 500 names
2 randomly selected from each of the five years of the proposed class period, for a total of 2,500
3 names. Judge Spero issued an Order to this effect on August 5, 2008. A true and correct copy of
4 the Order is attached hereto as Exhibit B.

5 The Order states that Defendant was to provide names and contact information other than
6 the employees' home telephone numbers. The Order further states that "Plaintiff's counsel may
7 not initiate contact with any of these 2,500 hourly employees except by letter... [t]he letter may
8 invite the hourly employees to contact Plaintiff's counsel." The Order states no findings regarding
9 Judge Spero's decision to so restrict Plaintiff's ability to initiate contact with putative class
10 members via telephone, and Defendant's counsel made no such request in the parties' joint letter
11 to the Court.

12 II. ARGUMENT

13 Magistrate Judge Spero did not dispute that the contact information Plaintiff sought is
14 discoverable. It is a long-settled principle that potential class members possess information
15 regarding the merits of an action. Hoffman-La Roche, Inc. v. Sperling, 493 U.S. 165, 170 (1989)
16 (district court was correct to permit discovery of the contact information of the potential class
17 members because the employees might have knowledge of other discoverable matters). See, e.g.,
18 Pioneer Electronics (USA), Inc. v. Superior Court, 40 Cal. 4th 360, 373 (2007) (potential class
19 members' contact information is generally discoverable so that the lead plaintiff may learn the
20 names of other persons who might assist in prosecution of the case); Puerto v. Superior Court, 158
21 Cal. App. 4th 1242, 1249 (2008) (identification of putative class members and witnesses and
22 production of their contact information is within the scope of proper discovery). Rather, Judge
23 Spero limited Plaintiff's ability to actually communicate with the potential class members.

24 In Gulf Oil Co. v. Bernard, the United States Supreme Court held that a district court
25 abuses its discretion when it issues an order limiting communications with class members without
26 making factual findings supporting the need for such restraint and the record reveals no grounds
27 on which such a restraint is necessary. 452 U.S. 89 (1981). Justice Powell enumerated the
28 problems that arise from restricting the plaintiffs' ability to contact witnesses: namely,

1 interference with efforts to inform potential class members of the existence of the lawsuit, and
2 interference with the plaintiffs' ability to obtain information about the merits of the case from the
3 persons they sought to represent. Id. at 101.

4 A district court has broad, but not unlimited, discretion to manage a class action and to
5 enter orders governing the conduct of counsel and parties. Id. at 100. Accordingly, the Gulf Oil
6 court instructed:

7 "[A]n order limiting communications between parties and potential class members should
8 be based on a clear record and specific findings that reflect the weighing of the need for a
9 limitation and the potential interference with the rights of the parties... In addition, such a
10 weighing – identifying the potential abuses being addressed – should result in a carefully
drawn order that limits speech as little as possible, consistent with the rights of the parties
under the circumstances."

11 Id. at 101-102. While the Supreme Court declined to state what the First Amendment actually
12 requires in this situation, Justice Powell emphasized that a district court should act with caution in
13 drafting an order that limits communication by giving due attention to "whether the restraint in
14 communication is justified by a likelihood of serious abuses." Id. at 103-104.

15 Judge Spero's Order consists of a single page. The Order does not state any factual
16 findings regarding the potential for Plaintiff to abuse the contact information. Indeed, the Order
17 could not state any such findings, as the record contains no evidence reflecting actual or potential
18 misconduct on the part of Plaintiff or her counsel. Similarly, the Order does not make any attempt
19 to balance any perceived need for restricting Plaintiff's ability to communicate with the actual
20 interference with communication the Order creates. Again, Plaintiff does not object to the essence
21 of the Order, which conformed to Plaintiff's proposal for disclosure of the contact information,
22 save for the exclusion of telephone numbers. Plaintiff objects only to the portion of the order that
23 unlawfully restricts her ability to communicate with potential class members and thereby gather
24 evidence regarding the merits of her claim. As such, the Order clearly violates both Plaintiff's
25 First Amendment rights and the rule of Gulf Oil.

26 **III. CONCLUSION**

27 Accordingly, Plaintiff respectfully requests that this Court vacate the portion of Magistrate
28 Judge Spero's order prohibiting Plaintiff's counsel from initiating contact via telephone. Plaintiff

1 further requests that Defendant be ordered to produce the telephone numbers for the 2,500 hourly
2 employees for whom it has already produced names and addresses.

3
4 Date: August 15, 2008

QUALLS & WORKMAN, L.L.P.

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6 By: 

7 Daniel H. Qualls
8 Attorney for Plaintiff
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